

APPEAL NO. 041428
FILED AUGUST 5, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 12, 2004. The hearing officer determined that the respondent (claimant herein) sustained a compensable injury on _____; that the compensable injury extends to internal derangement (of the left knee), including the articular surface and arthrosis; and that the claimant had disability from March 20 through August 25, 2003.

The appellant self-insured (carrier herein) appeals, contending that the hearing officer identified the wrong knee in her determinations and in any event all of the claimant's conditions were preexisting and that the claimant sustained no new injury (as defined in Section 401.011(26)). The claimant responds, urging affirmance.

DECISION

Affirmed as reformed.

One of the claimed points of error is that the hearing officer identified a new right knee injury whereas the record shows that the claimant was asserting a left knee injury. It is true that the hearing officer's Finding of Fact No. 3 finds that the claimant "sustained a right knee injury." Our review of the record indicates that while the claimant had severe bilateral knee complaints the injury at issue was the left knee. We regard the hearing officer's reference to a right knee injury in Finding of Fact No. 3 to be a clerical error and we reform the hearing officer's determination in Finding of Fact No. 3 to be that the claimant "sustained a left knee injury."

The claimant, a nurse, testified that on _____, as she was walking from a tiled area to a carpeted area, she tripped, or her foot grabbed, and she caught herself on a desk to keep from falling to the floor. It is undisputed that the claimant had serious preexisting bilateral knee problems and had had prior left knee surgery in 1998. The claimant's tripping incident was witnessed and the claimant had left knee surgery on May 9, 2003. The claimant returned to work on August 26, 2003. The carrier contends that the tripping incident of _____, did not aggravate, worsen, or enhance the claimant's preexisting condition, that the claimant had not sustained a new compensable injury, that the claimed conditions were preexisting, and that the claimant did not have disability.

Whether the claimant sustained a new injury, whether the claimed conditions were preexisting and whether the claimant had disability were questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the fact finder, the hearing officer was charged with the responsibility of resolving the conflicts and inconsistencies in the evidence and deciding what facts the evidence had established. This is equally true of

medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The factors emphasized by the carrier in challenging the hearing officer's determinations on appeal are the same factors it emphasized at the hearing. The significance, if any, of those factors was a matter for the hearing officer in resolving the issues before her. The hearing officer was acting within her province as the fact finder in reaching her conclusions. Nothing in our review of the record reveals that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, no sound basis exists for us to disturb those determinations on appeal.

The hearing officer's decision and order are affirmed as reformed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**MANAGER
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Chris Cowan
Appeals Judge